

IN THE GRAND COURT OF THE CAYMAN ISLANDS

Fed 0138 .

FSD CAUSE NO OF 2010

BETWEEN:

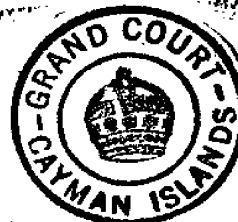
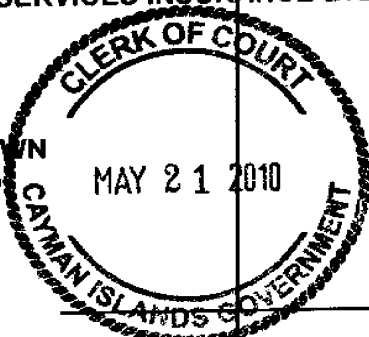
TEMPORARY SERVICES INSURANCE LTD.

Plaintiff

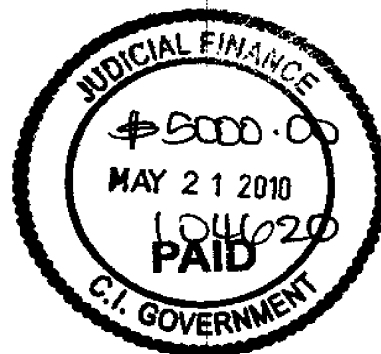
AND

ROBERT BROWN  
(an individual)

Defendant



WRIT OF SUMMONS



TO: Robert Brown  
7 Sugar Mills Road  
Hillsborough  
NJ, 08844

**THIS WRIT OF SUMMONS** has been issued against you by the above-named Plaintiff in respect of the claim set out on the next page.

Within 28 days after the service of this Writ on you, counting the day of service, you must either satisfy the claim or return to the Court Office, PO Box 495 GT, George Town, Grand Cayman, the accompanying Acknowledgment of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgment within the time stated, or if you return the Acknowledgment without stating therein an intention to contest the proceedings, the Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 21st day of *May* 2010.

NOTE: This Writ may not be served later than 4 calendar months (or, if leave is required to effect service out of the jurisdiction, 6 months) beginning with the date of issue unless renewed by order of the Court.

**IMPORTANT**

Directions for Acknowledgment of Service are given with the accompanying form.

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## STATEMENT OF CLAIM

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### INTRODUCTION AND CONTRACT TERMS

- 1 The Plaintiff is a Cayman Islands exempted limited insurance company which has its registered office at PO Box 10027APO, Grand Cayman, Cayman Islands and carries on business providing reinsurance for an insurance program written by United States licensed insurance companies for participants, or affiliated entities of participants, in the Plaintiff. Furthermore, the Plaintiff's issued shares are owned by the participants in the insurance program, or by their affiliates.
- 2 The Defendant is an individual resident in the United States of America. The Defendant is the registered holder of one common and one preferred share issued by the Plaintiff.
- 3 The Defendant was the principal and owner of a company called East West Staffing LLC. East West Staffing LLC, its subsidiaries and affiliates (together, the "**Insureds**") were participants in the insurance program arranged by the Plaintiff.
- 4 By a written agreement made between the Plaintiff and the Defendant signed by the Plaintiff on 26 April 2004 and by the Defendant on 20 April 2004 (the "**2004 Shareholder Agreement**") and by a second written agreement signed by the Plaintiff on 17 May 2006 and by the Defendant on 25 April 2006 (the "**2006 Shareholder Agreement**"), the Defendant agreed, amongst other things, to meet financial obligations to the Plaintiff as determined by operation of the Plaintiff's Experience Rated Premium/Loss Formula ("**Experience Rated Formula**") attached as Exhibit F to the Plaintiff's information memoranda dated 1 October 2003 (the "**2003 Information Memorandum**") and 1 January 2006 (the "**2006 Information Memorandum**"), respectively.
- 5 Save with respect to references to C Fund contributions and A Fund assessments, the material terms of the 2004 Shareholder Agreement and 2006 Shareholder Agreement are the same. Where the Statement of Claim refers to provisions common to both agreements, it refers simply to the "**Shareholder Agreement**".

6 Save with respect to references to C Fund contributions and A Fund assessments, the material terms of the 2003 Information Memorandum and 2006 Information Memorandum are the same. Where the Statement of Claim refers to provisions common to both information memoranda, it refers simply to the "Information Memorandum".

7 The Plaintiff will rely on the abovementioned documents at trial for their full terms and effect.

7.1 The preamble to the Shareholder Agreement states:

*"WHEREAS, the Shareholders and [the Plaintiff] are desirous that certain obligations and responsibilities incumbent upon each Shareholder be formalized to allow [the Plaintiff] to enforce such obligations and responsibilities; ..."*

7.2 Clause 1.11 of the Shareholder Agreement states:

*"Experience Rated Formula means the experience rated premium/loss formula developed by [the Plaintiff] as set out under the heading "Premium Calculation/Loss Distribution Rules" in Section II of Exhibit F to the Information Memorandum as they may be modified from time to time by the Directors."*

7.3 Clause 1.12 of the Shareholder Agreement states:

*"Experience Rated Premium Definitions means the words and expressions and their definitions as contained in Section I of Exhibit F, Experience Rated Premium/Loss Formula, to the Information Memorandum as they may be modified from time to time by the Directors and as they may be applied in the interpretation of the Experience Rated Formula."*

7.4 Clause 1.13 of the Shareholder Agreement states:

*"Federal Excise Tax means the amount of US federal excise tax withheld from the [Plaintiff] on premium ceded and associated with an Active Shareholder during a period."*

7.5 Clause 1.25 of the Shareholder Agreement states:

*"Shareholder means a person who is the registered holder of a Common Share and/or a Preferred Share ..."*

7.6 Clause 1.26 of the Shareholder Agreement states:

*"Shareholder Obligations means the financial obligations due from each holder of a Common Share (or its Insured affiliate) to [the Plaintiff], including, but not limited to, premium payments, additional premium assessment obligations (including IBNR reserve assessments), collateral for deductibles if required by a policy-issuing Program Insurer, losses, loss reserves, allocated loss adjustment expense, fixed costs (as estimated initially and as subsequently adjusted to reflect actual operating expenses), funding requirements arising from negative investment returns, legal and administrative costs and charges generally recognized in insurance accounting, all as the same as may be determined by the Directors from time to time and whose determination of such obligations shall, absent manifest error, be final and binding on all parties. Shareholder obligations continue throughout an applicable policy year, even if coverage is terminated prior to year-end. Premium assessments made by the Directors for any policy year (in addition to the initial premium charged) are currently limited generally to an amount equal to 100% of the A Fund (as defined in the Experience Rated Formula as it may be modified by the Directors from time to time) portion of the premium paid by each Shareholder (or its Insured affiliates) to the policy-issuing Program Insurer for such policy year; C Fund calls may also be made if the security fund balance in the C Fund falls below specified levels (see Section 3.2 below)."*

7.7 Clause 3.1 of the Shareholder Agreement states:

*"Experience Rated Formula. The Shareholders and each of them hereby agree to be bound by the Experience Rated Formula with respect to the calculation of premiums and the distribution of losses and costs among the Class Fund, the obligations of Shareholders for assessments, and all related and dependent matters"*

7.8 Clause 3.3 of the Shareholder Agreement states:

*"**Compliance.** Each Shareholder hereby undertakes to satisfy and discharge the Shareholder Obligations in full when the same are due. Each Shareholder hereby undertakes to comply with the provisions of the Memorandum, Articles and all policies and procedures duly adopted by the Directors or the Shareholders. In addition, each Shareholder acknowledges and agrees with [the Plaintiff] that its shareholding is not an entitlement to have its risks (or its affiliates' risks) underwritten by [the Plaintiff] and that [the Plaintiff] will only underwrite risks where the Directors have determined that the claims experience, loss control procedures and results of the proposed insured are satisfactory."*

8 Section I of the Experience Rated Formula found at Exhibit F to the 2003 Information Memorandum contains the following definitions:

1. **Experience Rated Premium:** *An individual shareholder insured's premium giving consideration to its past loss history as a determining factor in calculating its renewal premium.*
2. **A Fund Contribution:** *A portion of the individual shareholder insured's premium that is applied to the combined A Fund that is used to pay all "expected" losses (incurred losses, including those paid or for which reserves have been established and including allocated loss adjustment expenses) up to, currently, \$75,000 per occurrence. ...*
3. **B Fund Contribution:** *A portion of the individual shareholder insured's premium that is applied to the combined B Fund that is used to pay all losses (incurred losses, including those paid or for which reserves have been established) individually above, currently, \$75,000 up to a maximum of [the Plaintiff's] retention (currently \$300,000), plus allocated loss adjustment expense. ...*
4. **C Fund Contribution:** *The current year portion of the individual shareholder insured's premium equal, generally, to 60% of the A Fund contribution (.6A) that is applied to pay all "expected" losses (incurred losses, including those paid or for which reserves have been established and including allocated loss adjustment expenses) in the A Fund layer which losses exceed the shareholder insured's A Fund contribution*

plus the 100% A Fund assessment. See Rule 7 (in Section II hereof) for a discussion of the A Fund premium assessment.

6. **Fixed costs contribution ("FC"):** *The individual shareholder insured's portion of the fixed costs for the Company for the year's program. ... Fixed costs are estimated at the beginning of each policy year. If actual costs exceed the initial FC contributions, shareholder insureds may be assessed additional premium to fund such actual fixed costs as determined on audit. Additionally, if Company investment returns are negative for a policy year, additional premium may be assessed (subject to the item Section II, Rule 7 assessment limit of 100% of the A Fund amount.)"*

9 Section I of the Experience Rated Formula found at Exhibit F to the 2006 Information Memorandum contains the following definitions:

- "1. **Experience Rated Premium:** *An individual shareholder insured's premium giving consideration to its past loss history as a determining factor in calculating its renewal premium.*
2. **A Fund Contribution:** *A portion of the individual shareholder insured's premium that is applied to the combined A Fund that is used to pay all "expected" losses (incurred losses, including those paid or for which reserves have been established and including allocated loss adjustment expenses) up to, currently, \$100,000 per occurrence. ...*
3. **B Fund Contribution:** *A portion of the individual shareholder insured's premium that is applied to the combined B Fund that is used to pay all losses (incurred losses, including those paid or for which reserves have been established) individually above, currently, \$100,000 up to a maximum of [the Plaintiff's] retention (currently \$400,000), plus allocated loss adjustment expense. ...*
4. **Shareholder Security:** *The individual shareholder insured's portion of security in the form of letters of credit, cash, or other acceptable security, held as security to meet the surplus needs of the [Plaintiff]. Among these needs is security for the shareholder*

insured's potential A Fund additional premium assessment. The initial security contribution is currently equal to 60% of the shareholder insured's A Fund...

5. **Operating Costs contribution ("OC"):** *The individual shareholder insured's portion of the operating costs for the [Plaintiff] for the year's Insurance Program. ... Operating Costs are estimated at the beginning of each policy year. If actual costs exceed the initial OC contributions, shareholder insureds may be assessed additional premium to fund such actual fixed costs as determined on audit. Additionally, if Company investment returns are negative for a policy year, additional premium may be assessed (subject to the item Section II, Rule 7 assessment limit of 100% of the A Fund amount.)"*

10 The 2005 policy year was the last year in which the Plaintiff charged its insured members C Fund contributions as part of premium.

11 Clause 1.26 of the Shareholder Agreement provides for payment by the Defendant of, among other things, "*premium payments*" (see paragraph 7.6 above).

12 The Plaintiff's policy years run from 1 January each year to 1 January the following year. Where in this Statement of Claim the Plaintiff refers to a year or to a "policy year", this means the year beginning 1 January that year and ending 1 January the following year (so, for example, the 2005 policy year starts on 1 January 2005 and ends on 1 January 2006).

#### **COMPONENTS OF THE DEFENDANT'S OBLIGATION TO THE PLAINTIFF**

13 As is further pleaded and particularised at paragraphs 19 to 26 below, the Defendant owes the Plaintiff sums under the Shareholder Agreement in respect of the 2004, 2005, 2006, 2007 and 2008 policy years.

## Unpaid premium

- 14 'Unpaid Premium' includes the premium for a given policy year as calculated prior to A Fund assessments (i.e. A Fund contributions + B Fund contributions [+ C Fund contributions] + Fixed Costs) minus any amounts paid towards this figure (such as premium installment payments; contributions to fixed costs; and/or any collateral applied to premium).

### Particulars

- 14.1 Section II of the Experience Rated Formula contained at Exhibit F to the 2003 Information Memorandum provides for the calculation of initial premium as follows:

*"6. An insured's initial premium is equal to its contributions to each Fund and to fixed costs shown as:*

$$A \text{ [Fund]} + B \text{ [Fund]} + C \text{ [Fund]} + FC \text{ [Fixed Costs]} = \text{Initial Premium "}$$

- 14.2 Section II of the Experience Rated Formula contained at Exhibit F to the 2006 Information Memorandum provides for the calculation of initial premium as follows:

*"6. An insured's initial premium is equal to its contributions to each Fund and to operating costs shown as:*

$$A \text{ [Fund]} + B \text{ [Fund]} + OC \text{ [Operating Costs]} = \text{Initial Premium "}$$

## A Fund assessments

- 15 Pursuant to the provisions of the Experience Rated Formula, an insured member's A Fund contributions may only be supplemented by up to a given factor of the full value of the A Fund. In 2005 the Plaintiff permitted additional contribution up to 100% of the value of the A Fund (i.e. 2 x A, or 2A, in total). In 2006 this increased to a total of 2.6A. An 'A Fund assessment' is the amount which the insured member must pay in addition to his original A Fund contribution based on his loss experience for the policy year in question.
- 16 Amounts payable as a result of an A Fund assessment become due and payable at different stages during the following 3 years.

Particulars to paragraphs 15 and 16

16.1 Section II of the Experience Rated Formula contained at Exhibit F to the 2003 Information Memorandum provides for the calculation of A Fund assessments as follows:

*"7. The maximum additional cost that can be assessed to a shareholder insured, as additional premium, due to unsatisfactory individual or group loss experience and shortfalls resulting from negative investment returns, is an amount equal to 100% of its original A Fund contribution for that policy year."*

16.2 Section 1.26 of the 2004 Shareholder Agreement also provides as follows:

*"Premium assessments made by the Directors for any policy year (in addition to the initial premium charged) are currently limited generally to an amount equal to 100% of the A Fund (as defined in the Experience Rated Formula as it may be modified by the Directors from time to time)..."*

16.3 Section II of the Experience Rated Formula contained at Exhibit F to the 2006 Information Memorandum provides for the calculation of A Fund assessments as follows:

*"7. The maximum additional cost that can be assessed to a shareholder insured, as additional premium, due to unsatisfactory individual or group loss experience and shortfalls resulting from negative investment returns, is an amount equal to 160% of its original A Fund contribution for that policy year."*

16.4 Section 1.26 of the 2006 Shareholder Agreement also provides as follows:

*"Premium assessments made by the Directors for any policy year (in addition to the initial premium charged) are currently limited generally to an amount equal to 160% of the A Fund (as defined in the Experience Rated Formula as it may be modified by the Directors from time to time)..."*

16.5 Section II of the Experience Rated Formula contained at Exhibit F to the Information Memorandum provides for the payment of A Fund assessments as follows:

*"10. If there is an assessment for an additional contribution to the A Fund, it will typically not be assessed until completion of the policy year and will be payable quarterly 50% in Year 2, 30% in Year 3 and 20% in Year 4. ..."* (Emphasis added)

#### **C Fund calls**

17 An insured member is entitled to draw on the C Fund amount it has paid in to cover its own losses once the A Fund has been exhausted and the maximum A Fund assessment has been charged. In cases where the C Fund is used to pay claims the Plaintiff is entitled to invoice (or make a C Fund call to) the insured member for such amount as is necessary to replace the amount taken from the C Fund.

#### Particulars

17.1 The Plaintiff repeats paragraph 8 above.

#### **CALCULATION OF BALANCES OWED BY THE DEFENDANT**

18 The Plaintiff's claim relates to sums of money owed by the Defendant under the above heads: unpaid premium, A fund assessments and C Fund calls. The Plaintiff sets out below the sums owed by policy year.

#### **2004 POLICY YEAR (Unpaid premium)**

19 The Defendant owes the Plaintiff US\$369,677.00 in respect of the 2004 policy year, made up of unpaid premium.

#### Particulars

19.1 The Defendant was required to pay A Fund contributions of US\$212,472.00, B Fund contributions of US\$46,744.00, C Fund contributions of US\$21,668.00 and Fixed Costs contributions of US\$193,662.00, totalling US\$474,546.00.

19.2 The Defendant has made payments of US\$104,869.00 towards premium for the 2004 policy year and therefore owes the balance of US\$369,677.00.

**2005 POLICY YEAR (C Fund call; A Fund assessment)**

20 The Defendant owes the Plaintiff US\$604,901.00 in respect of the 2005 policy year, made up as follows:

20.1 An outstanding C Fund call in the amount of US\$759,241.00; minus

20.2 An A Fund assessment credit of US\$154,340.00.

Particulars

- (a) The Defendant's A Fund contributions for the 2005 policy year were insufficient to meet his losses, resulting in US\$759,241.00 of the C Fund being used. As a result the Plaintiff was entitled to, and did, make a C Fund call for the same amount.
- (b) The Defendant has made no payments in respect of this sum and the full amount remains outstanding.
- (c) The Defendant's A Fund assessment for the 2005 year was US\$1,265,402.00.
- (d) The Defendant has paid US\$1,419,742.00 in respect of this sum, representing a credit of US\$154,340.00.

**2006 POLICY YEAR (A Fund assessment)**

21 The Defendant owes the Plaintiff \$1,904,101.00 in respect of the 2006 policy year, made up of outstanding A Fund assessment contributions.

Particulars

21.1 The Defendant's A Fund assessment for the 2006 year was US\$3,333,524.00.

21.2 The Defendant has paid US\$1,429,423.00 towards this sum and the Defendant therefore owes the balance of US\$1,904,101.00.

**2007 POLICY YEAR (Unpaid premium; A Fund assessment)**

22 The Defendant owes the Plaintiff US\$182,712.00 in respect of the 2007 policy year, made up as follows:

22.1 Unpaid premium US\$65,698.00; plus

22.2 Outstanding A Fund assessment of US\$117,014.00.

Particulars

- (a) The Defendant was required to pay A Fund contributions of US\$4,014,771.00, B Fund contributions of US\$1,124,136.00 and Fixed Costs contributions of US\$2,669,795.00, totalling US\$7,808,702.00.
- (b) The Defendant has made payments of US\$7,743,004.00 towards premium for the 2007 policy year and therefore owes the balance of US\$65,698.00.
- (c) The Defendant's A Fund assessment for the 2007 policy year was US\$117,014.00.
- (d) The Defendant has made no payments towards this sum and the full amount remains outstanding.

**2008 POLICY YEAR (Unpaid premium; A Fund assessment)**

23 The Defendant owes the Plaintiff US\$2,605,052.00 in respect of the 2008 policy year, made up as follows:

23.1 Unpaid premium of US\$2,551,805.00; plus

23.2 Outstanding A Fund assessment of US\$53,247.00.

Particulars

- (a) The Defendant was required to pay A Fund contributions of US\$3,806,556.00, B Fund contributions of US\$1,065,836.00 and Fixed Costs contributions of US\$2,302,386.00, totalling US\$7,174,778.00.

- (b) The Defendant has made payments of US\$4,622,973.00 towards premium for the 2008 policy year and therefore owes the balance of US\$2,551,805.00.
- (c) The Defendant's A Fund assessment for the 2008 policy year was US\$53,247.00.
- (d) The Defendant has made no payments towards this sum and the full amount remains outstanding.

24 In respect of the policy years 2004 to 2008, the Defendant therefore owes the principal sum of US\$5,666,443.00.

25 The Defendant may in due course owe further amounts in respect of:

- 25.1 quarterly payments of A Fund assessments falling due later this year or in subsequent years (see paragraph 16.5 above); and
- 25.2 additional A Fund assessments as further losses are incurred over time.

The Plaintiff's rights remain reserved in respect of any such further debts.

#### **Excise Tax**

26 The Defendant is further liable to the Plaintiff for US\$76,800.88 in respect of United States federal excise tax, which the Plaintiff will be liable to remit to the United States Federal Government upon collection from the Defendant of the other amounts claimed herein.

#### Particulars

26.1 Clause 1.13 of the 2003 Information Memorandum states (at page 26):

*"If a United States shareholder insured experiencing greater A Fund Losses than expected becomes subject to assessment in any amount up to 100% of its A Fund Contribution, the payment of the additional assessment by the United States shareholder insured to [the Plaintiff] would be subject to the FET [i.e. federal excise tax] at the 4% rate imposed on direct insurance premiums."*

and the 2006 Information Memorandum states (also at page 26):

*"If a United States shareholder insured experiencing greater A Fund Losses than expected becomes subject to assessment in any amount up to 160% of its A Fund Contribution, the payment of the additional assessment by the United States shareholder insured to [the Plaintiff] would be subject to the FET [i.e. federal excise tax] at the 4% rate imposed on direct insurance premiums."*

26.2 The Defendant incurred A Fund assessments of US\$1,904,101.00 (in 2006), US\$117,014.00 (in 2007), US\$53,247.00 (in 2008) and a credit of US\$154,340.00 (in 2005), totaling US\$1,920,022.00.

26.3 Tax calculated at 4% of this amount is US\$76,800.88.

27 On 23 April 2010 the Plaintiff (through its attorneys, Maples and Calder) sent to the Defendant a demand requiring payment of all outstanding balances. The Defendant has failed, alternatively refused, to pay these moneys and, in premise of the matters pleaded herein, is in breach of the 2004 and 2006 Shareholder Agreements.

**AND THE PLAINTIFF CLAIMS:**

- (1) Judgment against the Defendant in the sum of US\$5,743,243.88;
- (2) Interest pursuant to section 34 of the Judicature Law (2007 Revision);
- (3) Costs; and
- (4) Such further or other relief as the Court deems fit.



Maples and Calder

Attorneys-at-law for the Plaintiff

This Writ was issued by Maples and Calder, Attorneys for the Plaintiff whose address for service is Ugland House, South Church Street, PO Box 309GT, George Town, Grand Cayman. (Ref. JSE/615325/18662739)

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FSD CAUSE NO OF 2010

BETWEEN:

TEMPORARY SERVICES INSURANCE LTD.

Plaintiff

AND

ROBERT BROWN  
(an individual)

Defendant

ACKNOWLEDGMENT OF SERVICE OF WRIT OF SUMMONS

If you intend to instruct an Attorney to act for you, give him this form IMMEDIATELY.

important. Read the accompanying directions and notes for guidance carefully before completing this form. If any information required is omitted or given wrongly, THIS FORM MAY HAVE TO BE RETURNED.

Delay may result in judgment being entered against a Defendant whereby he may have to pay the costs of applying to set it aside.

1. State the full name of the Defendant by whom or on whose behalf the service of the Writ of Summons is being acknowledged.

2. State whether the Defendant intends to contest the proceedings (*tick where appropriate*)

yes

no

3. If the claim against the Defendant is for a debt or liquidated demand, AND he does not intend to contest the proceedings, state if the Defendant intends to apply for a stay of execution against any judgment entered by the Plaintiffs (*tick box*)

yes

no

Service of the Writ is acknowledged accordingly

(Signed) .....  
Attorney for

Dated:

**Please complete overleaf**

**Notes on address for service**

**Attorney:** where the Defendant is represented by an attorney, state the attorney's place of business in the Cayman Islands. A Defendant may not act by a foreign attorney.

**Defendant in person:** where the Defendant is acting in person, he must give his post office box number and the physical address of his residence or, if he does not reside in the Cayman Islands, he must give an address in Grand Cayman where communications for him should be sent. In the case of a limited company, "residence" means its registered or principal office.

**Indorsement by Plaintiffs' attorney (or by Plaintiffs if suing in person)** of his name, address and reference, if any, in the box below.

|  |  |
|--|--|
| Maples and Calder<br>Ugland House<br>PO Box 309<br>George Town<br>Grand Cayman<br>KY1-1104<br>Cayman Islands<br><br>Ref: JSE/MCK/615325-05 |  |
|--|--|

**Indorsement by the First Defendant's attorney (or by Defendant if suing in person)** of his name, address and reference, if any, in the box below.

|  |  |
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**Indorsement by the Second Defendant's attorney (or by Defendant if suing in person)** of his name, address and reference, if any, in the box below.

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**DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICE  
OF WRIT OF SUMMONS**

1. The accompanying form of Acknowledgment of Service should be completed by an Attorney acting on behalf of the Defendant or by the Defendant if acting in person.  
After completion it must be delivered or sent by post to the Law Courts, PO Box 495, George Town, Grand Cayman, KY1-1106, Cayman Islands.
4. A Defendant who states in his Acknowledgement of Service that he intends to contest the proceedings must also serve a Defence on the Attorney for the Plaintiffs (or on the Plaintiffs if acting in person).  
If a Statement of Claim is indorsed on the Writ (i.e. the words "Statement of Claim" appear on the top of page 2), the Defence must be served within 14 days after the time for acknowledging service of the Writ, unless in the meantime a summons for judgment is served on the Defendant.  
If the Statement of Claim is not indorsed on the Writ, the Defence need not be served until 14 days after a Statement of Claim has been served on the Defendant.  
If the Defendant fails to serve his Defence within the appropriate time, the Plaintiffs may enter judgment against him without further notice.
3. A Stay of Execution against the Defendant's goods may be applied for where the Defendant is unable to pay the money for which any judgment is entered. If a Defendant to an action for a debt or liquidated demand (i.e. a fixed sum) who does not intend to contest the proceedings states, in answer to Question 3 in the Acknowledgement of Service, that he intends to apply for a stay, execution will be stayed for 14 days after his Acknowledgement, but he must, within that time, issue a Summons for a stay of execution, supported by an affidavit of his means. The affidavit should state any offer which the Defendant desires to make for payment of the money by instalments or otherwise.

### **Notes for Guidance**

1. Each Defendant (if there are more than one) is required to complete an Acknowledgment of Service and return it to the Courts Office.
2. For the purpose of calculating the period of 28 days for acknowledging service, a writ served on the Defendant personally is treated as having been served on the day it was delivered to him.
3. Where the Defendant is sued in a name different from his own, the form must be completed by him with the addition in paragraph 1 of the words "sued as (the name stated on the Writ of Summons)".
4. Where the Defendant is a FIRM and an attorney is not instructed, the form must be completed by a PARTNER by name, with the addition in paragraph 1 of the description "Partner in the firm of (...)" after his name.
5. Where the Defendant is sued as an individual TRADING IN A NAME OTHER THAN HIS OWN, the form must be completed by him with the addition in paragraph 1 of the description "trading as (...)" after his name.
6. Where the Defendant is a LIMITED COMPANY the form must be completed by an Attorney or by someone authorised to act on behalf of the Company, but the Company can take no further step in the proceedings without an Attorney acting on its behalf.
7. Where the Defendant is a MINOR or a MENTAL PATIENT, the form must be completed by an Attorney acting for a guardian ad litem.
8. A Defendant acting in person may obtain help in completing the form at the Courts Office.